

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, :
INC., MARKETING, SALES : Case No.
PRACTICES, AND PRODUCT : 3:19-md-2913-WHO
LIABILITY LITIGATION :

-HIGHLY CONFIDENTIAL-

SUBJECT TO PROTECTIVE ORDER

HYBRID VIDEOTAPED / REALTIMED DEPOSITION

MINETTE E. DRUMWRIGHT, Ph.D.

JUNE 1, 2022

Reported By:

Pat English-Arredondo, CSR, RMR, CRR, CLR

JOB NO: 211783

1 A. Yes, I do. You will see them
2 in -- as players in my opinions, or at least
3 I describe their behavior in the -- in the
4 report.

5 Q. Okay. Terrific. Now, can we
6 agree that the report is mostly a critique of
7 Professor Rock, an expert for Altria?

8 A. No. I would not characterize
9 it that way.

10 Q. How would you characterize it?

11 A. I would say that I respond to
12 Professor Rock's report, but then I go beyond
13 that and I -- I really try to understand the
14 underlying logic of the Altria investment,
15 which is what Dr. Rock said needed to be done
16 but didn't do.

17 Q. All right. Well, let's turn to
18 Page 9 of your report, please.

19 Towards the bottom you say that
20 "Professor Rock's analysis focuses only on
21 the question of legal control under Delaware
22 law rather than analyzing the evidence from a
23 practical business perspective."

24 Do you think that
25 Professor Rock was wrong to review the deal

1 lawyer. But I do teach advertising law and
2 marketing law and those sorts of things.

3 Q. Right. And I take it you're
4 not an expert in corporate law.

5 A. That's correct, I'm not an
6 expert in corporate law.

7 Q. I take it you're not an expert
8 in mergers and acquisitions.

9 A. Well, inasmuch as mergers and
10 acquisitions are a major part of business and
11 I'm a business professor, I would say that
12 that certainly is in the realm of the kinds
13 of things that I read about, research, write
14 cases about, teach about.

15 So in the broad arena of
16 business administration, it's certainly
17 something that I have some expertise in.

18 Is it my primary expertise?

19 No.

20 Q. Well, for example, you don't
21 teach a course about mergers and
22 acquisitions. Right?

23 A. I do not teach a course about
24 mergers and acquisitions.

25 Q. You do teach courses about

1 marketing and advertising. Right?

2 A. I teach courses about
3 marketing, advertising. I teach courses --
4 I've taught a finance course a couple of
5 times in the last couple of years. I teach a
6 leadership course.

7 So my teaching is rather broad.
8 I teach in MBA programs and leadership and
9 communication program, both broad programs
10 that equip students as well-rounded,
11 general -- general business administrators.

12 Q. I take it you're not an expert
13 in corporate transactions.

14 A. I'm not an expert in corporate
15 transactions, but I have certainly and
16 currently serve on a board where I have
17 advised a company on corporate transactions.
18 That's a very broad field.

19 But I certainly, as a person
20 who does consulting and teaching of business
21 cases that encompass many factors, that's
22 sometimes a factor that I consider.

23 Q. The board you reference, that's
24 CWS Corporate Housing?

25 A. It is.

1 are the primary board members.

2 Q. Do you consider yourself an
3 expert in corporate strategic alliances?

4 A. That is -- yes, that is an area
5 in which I have done research and teaching
6 for a number of years, written cases, and
7 that sort of thing.

8 Q. Do you consider yourself an
9 expert in corporate joint ventures?

10 A. Well, that's -- that's a field
11 that is broad and where I certainly have had
12 some experience. Is it my primary expertise?
13 I would say no.

14 But certainly as a person with
15 a Ph.D. in business administration, plus an
16 MBA, plus years of consulting, it's certainly
17 something that I have encountered and thought
18 about, read about, and researched to some
19 degree.

20 Q. Your résumé shows that you were
21 in the private sector in the '70s and '80s
22 for seven or eight years in marketing and
23 advertising. Is that right?

24 A. That's correct. In healthcare
25 and universities and also in advertising and

1 he received 1.82 billion pursuant to the
2 special dividend. Right?

3 A. Correct.

4 Q. Was it unethical for
5 Mr. Pritzker to receive that money in
6 exchange for 35 percent of the shares he
7 owned?

8 A. Well, on the face of it I -- I
9 would not -- I would not say that it's
10 necessarily unethical. But I would
11 need -- you know, ethical dimensions and
12 ethical judgments are judgments about which
13 one -- one would need much more information.

14 But I would say on the face of
15 it we don't have enough data to know just by
16 knowing that one fact.

17 Q. Was it a breach of his
18 fiduciary duty to receive 1.82 billion by
19 selling 35 percent of his shares to Altria?

20 A. Well, personally, if I were one
21 of the shareholders, I would like to see the
22 major investors plowing more money back into
23 the company. So I -- I would personally want
24 to see that happen.

25 Q. I don't understand your

1 response. Mr. Pritzker owned shares, he sold
2 some to Altria, and he or his entities
3 received the proceeds.

4 And you're saying that what he
5 should have done with some of it was plow it
6 back into the company.

7 A. Well --

8 Q. What's the basis for that?

9 A. One would hope to see a company
10 benefiting more than 200 million from a
11 transaction of this nature.

12 However, my overall point is
13 not to make ethical judgments about the
14 appropriateness of these payouts.

15 My point here is to make the
16 judgment that this creates a power dynamic
17 that enables Altria to have influence,
18 direction, and management of JLI. That's my
19 point.

20 Q. We will get there. If you
21 would please just answer my questions, do the
22 best you can. I know you disagree with the
23 premise of them. But that's the nature of
24 the exercise. So "yes" or "no" as best you
25 can.

1 Was it a breach of
2 Mr. Pritzker's fiduciary duty to sell
3 35 percent of the shares he held in JLI?

4 MR. HUDSON: Object to the
5 form. Asked and answered. I think
6 she's answered that question.

7 A. On the face of it selling --
8 the answer is no. On the face of it, I don't
9 think there is anything inappropriate about
10 selling one's shares.

11 Q. (By Mr. Guzman) Do you have an
12 opinion that JLI should not have done this
13 deal?

14 A. I do have an opinion that they
15 should not have done this deal in the manner
16 that they did in which they dramatically
17 expanded the sales, the distribution and
18 sales, of a dangerous product that was
19 targeting youth, attracting youth in the
20 midst of an epidemic of youth vaping. So I
21 do have that opinion.

22 Q. Okay. So you don't think that
23 JLI should have done the deal. I take it,
24 then, you don't think that the board of
25 directors should have authorized JLI to do

1 qualitatively I did. I looked at many
2 documents. I looked at many testimonies.

3 I looked at a whole host of
4 materials. And I came up with -- with facts
5 that -- that I list in my document.

6 And -- and so I would say that
7 from a qualitative perspective from
8 synthesizing many materials, that there are
9 facts in my report.

10 Q. Okay. And so you -- you
11 evaluated the facts and you came to your own
12 judgment about the facts. Is that fair?

13 MR. HUDSON: Object to the
14 form. Misstates her prior testimony.

15 A. What I'm saying is that I read
16 many documents. I read everything I could
17 get my hands on.

18 I synthesized it and identified
19 the patterns and the facts that supported
20 them and put them in this document.

21 Q. (By Mr. Guzman) Okay. And to
22 the extent there is a discrepancy, person A
23 said something and person B said something
24 else, you result that by making credibility
25 determinations.

1 Q. That's what I want you to
2 identify. What else was wrong with the
3 transaction?

4 A. Well, I'm concerned about
5 the -- about some of the interactions around
6 the regulatory issues.

7 Q. Such as?

8 A. Well, such as the -- the
9 conspiring before -- and I know you don't
10 want to talk about before the transaction,
11 but the conspiring to have mint projected as
12 a -- you know, as a non -- as a tobacco-type
13 flavor, a nonflavor flavor, and the -- the
14 manner in which mint was promoted and the
15 manner in which the sales of mints
16 dramatically increased during the year after
17 Altria invested in JUUL.

18 So, you know, I think from a
19 regulatory perspective that's problematic.

20 Q. Okay. You think it was
21 problematic that Altria offered to help JUUL
22 get regulatory approval through the process
23 known as PMTA?

24 A. I don't know that I would go so
25 far as to say I think it was inappropriate

1 for them to help them with that. I would
2 think that I would like to see more
3 consistent behavior.

4 If you're trying to be
5 responsible, why would you promote mint when
6 you know that it's appealing to youth and
7 when you see the sales of mint increasing to
8 youth? So -- so I think that's a very
9 problematic thing.

10 Q. Are you aware that after the
11 transaction JLI dropped all advertising and
12 marketing?

13 A. I am aware of the fact that
14 that happened. It was a while after the
15 transaction. I -- they paused the Instagram
16 and Facebook before the transaction; but, as
17 I recall, it was a while afterwards, before
18 the --

19 Q. Are you aware that after the
20 transaction JLI dropped the mint flavor and
21 all flavors?

22 A. That was sometime after the
23 transaction and that -- and in the year after
24 the transaction, the mint sales went from
25 something like one-third of JLI's sales to

1 The -- the -- in what way did
2 they fall down in their duty of loyalty to
3 JLI by negotiating and then approving the
4 transaction?

5 A. Well, I would like to see them
6 putting more money back into JLI, putting
7 more money into the kinds of things that
8 would make JLI a responsible, ethical
9 company.

10 Q. Anything else?

11 A. I think that is a broad set of
12 things and that that covers what I would like
13 to see. I would like to see, as I said, more
14 money going into the company, into the kinds
15 of things that would make it more responsible
16 and ethical. And that --

17 Q. So they sold -- I'm sorry. I'm
18 asking a question.

19 So they sold 35 percent of
20 their shares, as did all the other investors,
21 and you're saying that they should have taken
22 some of the proceeds from the sale of their
23 shares and put it into the company. Is that
24 right?

25 A. I would think that would be a

1 I -- I do think ultimately --
2 as you know from my report, ultimately Altria
3 had -- had the ability to do what it wanted
4 to do in terms of influencing --

5 Q. Not my question. Not my
6 question.

7 So can we agree that if
8 Mr. Pritzker and Mr. Valani and Mr. Burns had
9 sold, say, 50 percent of the company, that
10 they would have made even more money. Right?

11 A. I assume they would, but I
12 don't know. I don't know.

13 Q. So 35 percent of their shares
14 and they received money you've catalogued in
15 your report.

16 If they had sold 50 percent of
17 their shares, they would have received even
18 more. Right?

19 A. It would depend upon how good a
20 negotiator Altria was. So I wouldn't
21 speculate on -- on what would have happened
22 in a -- a different sort of transaction.

23 Q. Uh-huh. And by the way, let's
24 say that the board and the company had
25 decided to sell a controlling interest to

1 unethical in your view?

2 A. Again, it -- it would depend
3 upon what -- what happened, if Altria would,
4 indeed, expand the sales and distribution.

5 Now, I guess you could argue
6 that JLI is washing its hands, but -- but
7 certainly it prepared the foundation and --
8 and laid the groundwork.

9 I -- I would certainly have a
10 problem still with -- with the dramatic
11 expansion of distribution and sales.

12 Q. Okay. So it's an ethical
13 problem to sell 100 percent of itself to
14 Altria; it's an ethical problem to sell
15 controlling stake, so 50.1 percent; and as
16 your report documents, it was an ethical
17 problem for the company to sell 35 percent of
18 the outstanding shares to JLI --

19 A. No --

20 Q. -- excuse me -- to Altria? All
21 three. Right?

22 MR. HUDSON: Object to the
23 form.

24 A. No. I think that
25 mischaracterizes my testimony. My testimony

1 has to do with the problematic nature of the
2 distribution and sales and the expansion of
3 distribution and sales of a -- of a product,
4 a dangerous product, targeting youth in the
5 midst of a youth vaping epidemic. So that --
6 that's my testimony.

7 Q. (By Mr. Guzman) Oh, I see.
8 Okay. So maybe I misunderstood.

9 So it wouldn't be a problem to
10 sell 100 percent of yourself. It just
11 depends what happens later?

12 A. I would say, yes, that I could
13 imagine -- I could -- since we're talking
14 hypothetically, I could imagine a scenario
15 where Altria acquires 100 percent of JLI and
16 does what it did to its own product, MarkTen,
17 completely pauses, takes it off the market.

18 Q. You're right. They could shut
19 it down. They could donate all the assets to
20 charity. They could do any number of things.

21 You wouldn't have a quibble
22 with that. Right?

23 A. There are some things -- you're
24 correct, there are some things that I would
25 not have a quibble with. I wouldn't want to

1 operating.

2 Q. And we can agree that's a
3 business question, not a legal question.
4 Right?

5 A. It is a business question.

6 Q. You're not a legal expert.
7 Correct?

8 A. Correct.

9 Q. You're not a RICO expert.
10 Correct?

11 A. I am not.

12 Q. And you're not an expert in the
13 elements of the RICO statute. Correct?

14 A. Correct.

15 Q. And you are not offering any
16 opinion that Altria had a level of influence
17 that satisfied the RICO standard. Correct?

18 A. I don't know that that's the
19 case. I think that I am offering opinions
20 that would influence someone, like a jury,
21 making determinations about a RICO claim.

22 So -- so, yes, I am -- I
23 am -- I make some opinions that I know have a
24 bearing on a RICO claim, but it's not my job
25 to make that determination.

1 And so when you look at
2 managing, directing, and operating, you're
3 looking at, you know, determining what the
4 right things to do are and then implementing
5 those things.

6 Q. Okay. So -- well, let's start.
7 You said it's necessary but not sufficient.

8 Do you have an opinion that
9 Altria influenced JLI?

10 A. I do think that Altria had
11 influential power through the various -- you
12 know, various approaches that I detail. So,
13 yes, I think they certainly had influence.

14 Q. And when you say that's
15 "necessary but not sufficient," what do you
16 mean?

17 A. Well, you know, you have to act
18 on influence. You have to say what you think
19 the right things are to do. And then you
20 have to actually do them or implement them or
21 be a part of operating and
22 influencing -- operating and managing.

23 Q. Okay. And then so do you -- do
24 you believe that Altria, through its
25 influence, directed, managed, and operated

1 JLI?

2 A. I do.

3 Q. In every respect?

4 A. Not in every respect, but
5 certainly in important respects.

6 Q. Okay. What respects did it not
7 manage, direct, or operate JLI after the
8 transaction?

9 A. Well, I did not really set out
10 to see where they didn't operate, manage, or
11 influence or direct. It did seem to me there
12 were some times, as I mentioned earlier, when
13 there was some friction between the two. But
14 Altria, from what I could tell, ended
15 up -- ended up carrying the day.

16 One example was when there was
17 some friction between JUUL and Altria people
18 about -- about regulatory issues and Altria
19 contacted Valani and said, Don't send this
20 message to JUUL management, but, you know,
21 we're trying to influence Ken Burns.

22 And Valani says, Of course.
23 And let us know how it turns out and what we
24 can do.

25 And so -- so from everything I

1 regulatory issues.

2 Are you trying to get around
3 the regulations?

4 Are you trying to meet the
5 regulations?

6 Q. You have no evidence that
7 Altria or JLI were trying to get around the
8 regulations with the FDA, do you?

9 A. Well, I would think that the
10 behavior before the deal about the mint and
11 getting mint categorized as a nonflavor or as
12 a tobacco flavor would -- would suggest
13 getting around them, the regulations.

14 Q. We will come back to mint.
15 But other than that, you're not
16 suggesting that in the ongoing dealings with
17 the FDA that Altria and JLI have done
18 anything to try to -- try to avoid regulatory
19 scrutiny by the FDA?

20 A. Well, I had a big problem with
21 Altria's interactions with -- with
22 Commissioner Gottlieb saying, we are
23 withdrawing our product, we don't want to be
24 a part of the problem of youth vaping at the
25 same time that they are making a deal with

1 JUUL to greatly expand distribution and
2 sales. I think that is evidence of -- of not
3 having the right spirit about regulation.

4 Q. Post investment, you're not
5 pointing to anything Altria or JLI did to try
6 to avoid regulatory scrutiny by the FDA.
7 Correct?

8 A. Well, you know, I -- I point to
9 a lot of interactions and behavior that is
10 broad and -- and where it's hard to know what
11 the underlying intentions were.

12 Q. Okay. Just to go back to sort
13 of control versus influence, briefly.

14 You agree that Altria did not
15 have coercive power over JLI. Correct?

16 A. Correct. And I also think they
17 didn't need it.

18 Q. Understood. You agree that
19 they did not have legal control. Correct?

20 A. I do agree.

21 Q. You agree that they could not
22 shape JLI's decisions through command.
23 Correct?

24 A. Correct. Through -- and that
25 they couldn't make JLI do something that JLI

1 didn't want to do.

2 That's why influence is so
3 important, to get folks to want to do what
4 you want them to do.

5 Q. You agree that they never had
6 board seats that they voted with. Correct?

7 Meaning Altria never had board
8 seats in JLI. Right?

9 A. They didn't have voting board
10 seats.

11 Q. So your opinion is that they
12 had -- this is another phrase you
13 use -- noncoercive power. Right?

14 A. They had noncoercive power,
15 which I would be happy to elaborate on how
16 that happened with the board seats and other
17 dimensions.

18 Q. I've read the pages
19 (indicating).

20 Okay. Now, going back to
21 the -- not the regulatory services but the
22 youth services, would you say you didn't
23 really dig in on that question. Right?

24 A. I would say I didn't really dig
25 in on that question, that I was guided by

1 what Altria was touting and what JLI was
2 picking up on in the -- in the pre and post
3 negotiations and interactions. And, you
4 know, Altria was really touting --

5 Q. To --

6 A. -- its -- its distribution,
7 sales, and regulatory kinds of things.

8 Q. To understand the full scope of
9 Altria's noncoercive power, would -- would it
10 be helpful to better understand what happened
11 with the two companies about youth services?

12 A. I don't think it's necessary
13 because I had such abundant data related to
14 that question of playing some part in
15 directing, managing, or operating.

16 So I -- I -- no, I don't think
17 it would be helpful.

18 Q. So it's irrelevant whether
19 Altria had noncoercive power to influence JLI
20 to accept Altria's youth services and then
21 use them as part of its management and
22 operation?

23 A. I would say that I have
24 abundant data in my report that indicates
25 that Altria was managing, directing, and

1 operating, at least in -- at least in part,
2 by playing some part in those things. So I
3 would say I don't need that data.

4 Q. That wasn't my question,
5 whether you need it or not.

6 My question is: Is it
7 irrelevant?

8 A. You know, I don't know that I
9 would say it's irrelevant, because anything
10 is potentially relevant.

11 But I would say that I feel
12 confident in my opinions based on the data
13 that was very readily available and
14 abundantly clear. So I didn't need more data
15 on that -- on that topic.

16 Q. Okay. But the data
17 about -- the interactions between the
18 companies and their own thinking about
19 whether JLI was going to accept Altria's
20 youth services, that could be relevant to the
21 level of noncoercive power that Altria had.

22 A. It certainly could be relevant,
23 but it's not necessary for my -- for the
24 arguments -- to make the argue -- to make the
25 determination I made, I did not need more

1 data than what I had readily available.

2 Q. Okay. Now, you said time and
3 time again Altria got its way. You agree
4 they didn't get their way with respect to
5 whether JLI would accept their youth
6 services. Right?

7 A. I think that probably is the
8 case. My memory is not clear on that because
9 I was focusing on the things that I
10 documented here.

11 Q. And you can't, sitting here,
12 tell me what youth services Altria offered.
13 Right?

14 A. I don't know the specifics of
15 what they offered and -- you know, so I can't
16 give you those specifics. But I certainly,
17 as I -- as you know from reading my report,
18 have abundant evidence that Altria played a
19 role in directing, influencing, and operating
20 JUUL.

21 Q. Okay. When did that
22 influence and that resulted in -- I want
23 to use your phrases correctly.

24 When did that influence that
25 resulted in some part directing, managing, or

1 marketing.

2 But it still was a very
3 significant increase in distribution and the
4 kinds of marketing and advertising JUUL was
5 able to -- Altria was able to do for JUUL was
6 even more significant because JUUL couldn't
7 get away with the other things because of the
8 scrutiny.

9 Q. It was good that there was
10 scrutiny at that time. Right?

11 A. Well, I think that -- that
12 scrutiny is good in terms of it was scrutiny
13 on, you know, the targeting of youth.

14 Q. Okay. And before when you were
15 talking with Mr. Guzman, you pointed out
16 how -- how -- I mean, is it essentially your
17 opinion that absent pulling the product from
18 the market this deal never should have
19 happened?

20 I mean, that -- that's what I
21 was taking away.

22 Is that fair assessment?

23 A. Well, I don't know that I would
24 go that far. I would say that, you know, I
25 would want to see a much -- you know, much

1 more responsible, much faster implementation
2 of the kinds of things that are responsible
3 and ethical.

4 Q. Well, was it acceptable to be
5 doing any -- to be taking any steps to
6 increase sales post investment?

7 A. I think there certainly are
8 some things -- and I talked about this in my
9 earlier deposition -- there's some things
10 that could be done where you're just so very
11 sure that you're targeting adults, that
12 you're targeting them responsibly with
13 the -- you know, with accurate information.

14 And so there certainly are some
15 things that can be done.

16 Q. So if all --

17 MR. HUDSON: Sorry to
18 interrupt. But when you get to a good
19 break, whenever that is, let's take a
20 quick five-minute break.

21 MR. STEKLOFF: Sure.

22 MR. HUDSON: No hurry.

23 MR. STEKLOFF: No problem.

24 Q. (By Mr. Stekloff) So if
25 Altria -- I want to use your language.

1 is some good chance that you're going to have
2 bleed into younger age groups.

3 So -- so, you know, I think
4 that we would want to see -- we certainly
5 would want to see more responsible behavior
6 than what we saw.

7 Q. Okay. Now, you -- you told me
8 that Altria didn't have influence over all
9 aspects of JLI's business. Right?

10 A. Right. I was -- I did not set
11 out to make that estimation.

12 Q. Right.

13 A. Or -- or to make that -- to
14 make that assessment. I was looking for some
15 part.

16 Q. Just to use a random example,
17 you have no evidence that Altria was
18 influencing JLI's decisions about how to file
19 its taxes. Right?

20 A. I -- I didn't -- I didn't
21 investigate into that.

22 Q. Okay. And then even for those
23 areas, marketing, distribution, sales,
24 regulatory, do you agree that Altria's
25 influence over the direction, management, and

1 operation varied among those different
2 aspects of the business?

3 A. Well, I would say that it -- it
4 could vary and probably did vary, but I saw,
5 you know, significant influence, direction,
6 operation, and management in -- in those
7 areas, you know, the regulatory affairs, the
8 distribution, the sales, the marketing that
9 supported the sales and distribution.

10 Q. Okay. And so you do agree that
11 the -- that there was significant influence
12 over the direction, management, and operation
13 of the regulatory -- over the regulatory
14 strategy that JLI was exercising?

15 A. Yes, I saw evidence that Altria
16 had a team of people working on that and that
17 there were, you know, meetings and that sort
18 of thing.

19 Q. Okay.

20 A. And as well as in other areas,
21 like investor relations and things like that.
22 So I did not set out to make a determination
23 as to whether Altria was -- was influencing
24 every part, but just the parts that were
25 obvious as I looked at the data.

1 Q. And with respect to
2 distribution, marketing, and sales, do you
3 know when Altria stopped providing those
4 services to JLI?

5 A. I believe it was around
6 March of 2020.

7 Q. Okay. And so do you agree that
8 after March of 2020 Altria lost at least some
9 of its influence over the direction,
10 management, and operation of JLI's
11 distribution, marketing, and sales?

12 A. That would be my assumption,
13 but I really didn't focus on the period after
14 2020, after March of 2020.

15 Q. Okay. So you don't know,
16 sitting here, whether Altria's influence
17 diminished or went away in that area after
18 March 2020?

19 A. Given the relationships and
20 given the interactions that I saw among
21 Pritzker and Valani and Altria, I would
22 assume that as long as Pritzker and
23 Altria -- Pritzker and Valani are in the --
24 in the mix with Altria, that there is --
25 there is a basis for influence.

1 Q. But that's an assumption --

2 A. And a basis for -- but, you
3 know, my report deals primarily -- deals with
4 the period between, you know, mid-2017
5 to -- through the first quarter of 2020.

6 Q. Okay. And anything after that
7 would be -- you could guess, but it would be
8 speculative?

9 A. That -- that's correct. I
10 assumed that, as long as the relationships
11 are there, there is the basis for direction
12 and influence.

13 Q. Okay. And I'm almost done and
14 we can take a break.

15 You agree that there was
16 nothing fraudulent or illegal or -- let's
17 start with that. Fraudulent or illegal about
18 Altria providing regulatory services to JLI?

19 A. I'm not making those kinds of
20 judgments. I'm looking at the business
21 questions of whether Altria played a --
22 played some part in managing, directing, and
23 operating JUUL. It's not my job to make
24 those legal determinations.

25 Q. Okay. And it could be -- in

1 A. I guess, in theory, it -- it
2 would be possible.

3 Q. Okay. And you're not -- you're
4 not providing any opinion that anything that
5 Altria did in the regulatory realm,
6 post-investment, led to growth in the youth
7 market. Fair?

8 MR. HUDSON: Object to the
9 form.

10 A. Well, I -- I don't know
11 because -- because what one does with respect
12 to regulation can certainly influence the
13 youth market. And I would have liked to have
14 seen, you know, more dramatic and earlier
15 action on things like the mint flavor. So,
16 you know --

17 Q. (By Mr. Stekloff) You just
18 don't know?

19 A. I just don't know.

20 MR. STEKLOFF: Okay. Let's
21 take a break.

22 THE VIDEOGRAPHER: The time is
23 11:01. We are off the record.

24 (Recess taken at 11:01 a.m.,
25 resuming at 11:23 a.m.)

1 Any time one teaches a business
2 case, one is generally trying to get the
3 students to analyze what the logic behind the
4 strategy is or behind the corporate actions.
5 In fact, Professor Rock says that he does
6 that with his students on every corporate
7 transaction.

8 Q. Now, did -- in making that
9 assessment of the logic of the transaction,
10 did you have to make credibility
11 determinations of what the witnesses thought
12 at the time?

13 A. No. What I did was look at
14 what they said in contemporaneous documents,
15 what they said in their testimony, what they
16 actually did as reported in contemporaneous
17 documents or in their testimony.

18 Q. So did you always just take
19 them at their word?

20 A. Well, I would say no, I didn't,
21 because I would look at what they said and I
22 would look at what they did. I would see
23 what actually happened, what actually
24 transpired.

25 Q. So isn't that making a

1 credibility determination?

2 A. I don't think that's making a
3 credibility determination because I'm looking
4 at facts. I'm looking at the fact, what
5 happened.

6 Q. How is that not making a
7 credibility determination? Looking -- you're
8 looking at different facts and deciding which
9 one you think was more significant at the
10 time.

11 A. Well, what I would say --
12 MR. HUDSON: Object to the
13 form.

14 A. What I would say is I look at
15 what happened. And I, you know, place -- I
16 report what happened and so I would just say
17 that I am looking at the facts and trying to
18 synthesize the materials that I have to
19 discern the facts.

20 Q. (By Mr. Stekloff) If one of
21 the executives at JLI or Altria or on the
22 board testified, were there times at which
23 you didn't accept the credibility of what
24 they said?

25 A. Well, you know, I'm sure there

1 are times when -- well, I can -- in my
2 earlier report I cite all kinds of things
3 that the JLI board members said about how
4 they wanted to be the -- you know, the most
5 ethical company in this sphere, in this
6 arena, and then I looked at what happened.

7 And so, yes, there is some
8 conflict between what they said and what they
9 happened -- and what happened, what they did.
10 And so in that situation I would go with what
11 they did.

12 So they might say, we want to
13 be the most ethical company there is in the
14 arena of -- of our product. And then I see
15 what they did in terms of targeting youth and
16 I see the -- I see the -- the actions they
17 approved and authorized. And so I say, you
18 know, let's go with the facts.

19 Q. So is that -- in doing that, is
20 that making a credibility determination that
21 their deposition testimony was not credible?

22 A. No, I'm just looking at the
23 facts.

24 Q. And ignoring their deposition
25 testimony or discrediting their deposition

1 testimony?

2 A. I wouldn't say I'm discrediting
3 it. I'm taking everything into account. I'm
4 synthesizing everything.

5 Q. Okay. And if there are two
6 things that differ, what you think is a fact
7 based on an event that you think occurred
8 based on documents and deposition testimony,
9 and you believe those two things are at odds,
10 how did you decide which one to use?

11 MR. HUDSON: Object to the
12 form. Improper hypothetical. If you
13 got an example.

14 MR. STEKLOFF: She can answer
15 hypotheticals.

16 Q. (By Mr. Stekloff) You can
17 answer.

18 A. Yes, I would like for you to
19 give a hypothetical.

20 Q. You give me an example. Well,
21 let's use the one you just used, that they
22 said they wanted to be the most ethical
23 company, that was their intent, and you said
24 you saw facts that you think belied that
25 intent.

1 How did you make a
2 determination of which one was right?

3 A. Well, I think that's a pretty
4 easy call because, when you see people who
5 actually did and approved things that were
6 far from ethical by anybody's determination,
7 then I think that the facts are clear.

8 That's not really making a
9 credibility judgment. That's just saying the
10 facts are the facts.

11 Q. And saying -- so do you believe
12 that they -- in that instance that their
13 statement that they intended to be an ethical
14 company that was a leader in ethics was true
15 or false?

16 A. Well, those of us who studied
17 behavioral ethics understand that people can
18 have intentions that they don't live up to.

19 Q. So you're not questioning their
20 intentions?

21 A. Well, it's not my job to judge
22 their intentions. But the field of
23 behavioral ethics exists because there often
24 is a really gap -- a really big gap in what
25 people think their values are, say their

1 A. Well, I don't remember. But I
2 do -- I do agree with you that the terms were
3 agreed upon in late October and then the
4 investment was actually made in December.

5 Q. Would it be relevant at all to
6 Altria's potential influence and soft power
7 in that -- in that October to December 2018
8 time frame whether the deal was still
9 uncertain?

10 A. Well, I suppose it could be.
11 Anything is possible. But, you know, I saw
12 the relationship developing, as I mentioned
13 to you beginning in 2017, continuing on
14 through the time of the services and then
15 continuing on after the services were
16 stopped, the Altria services.

17 So -- so, you know, the
18 relationship is there. The sources of power
19 are developing before the deal is done. And
20 then really, as I said earlier, flourishing
21 afterwards.

22 Q. Right. But if there's fits and
23 starts in a negotiation, deal is still
24 uncertain, doesn't that demonstrate in that
25 negotiation period that JLI actually had

1 meaningful negotiation power?

2 A. Well, it certainly -- it
3 certainly could mean that, yes. And -- and,
4 yet, we see Altria bearing some influence.

5 Q. Okay. Well -- but JLI also had
6 influence on whether the deal was going to be
7 finalized in that time period. Correct?

8 A. They did have the final say.
9 But I think the key to negotiation like this
10 is Altria convincing JLI and getting JLI
11 comfortable with Altria and Altria becoming
12 comfortable with JLI, that they are going to
13 be able to get JLI to do what they want them
14 to do, even with 35 percent investment rather
15 than a controlling investment.

16 Q. So you think that at that point
17 Altria's only focus was whether they could
18 influence JLI?

19 A. I think that Altria had to
20 become comfortable with the fact that they
21 had a relationship substantial and solid
22 enough with Pritzker and Valani, the
23 controlling shareholders, controlling board
24 members that -- that they were comfortable
25 with them, that they all wanted the same

1 thing and they'd be able to influence them to
2 do what they wanted them to do, even without
3 the 51 percent investment.

4 MR. STEKLOFF: Can we mark this
5 as Exhibit 2, please.

6 (Marked was Drumwright Exhibit No. 2.)

7 THE WITNESS: Thank you.

8 Q. (By Mr. Stekloff) And this is
9 a December 2018 document, Altria document,
10 titled "Strategy Update."

11 Do you see that?

12 A. I do.

13 Q. Have you reviewed this document
14 before?

15 A. It's hard for me to say for
16 sure. I have -- I have done -- I have
17 reviewed so many documents, it does look
18 familiar, I must say.

19 Q. Okay. And if you turn to
20 Page 5.

21 A. Okay.

22 Q. This is called "Project Tree
23 Backdrop." Do you recall ever seeing this
24 page before?

25 A. I can't say for sure.

1 Altria.

2 Q. Okay.

3 A. So I don't think it was arm's
4 length. I think there is evidence that -- I
5 know there is evidence that Pritzker and
6 Valani really wanted to get the job done and,
7 in fact, gave advice to Altria about
8 presenting itself in an appealing way.

9 Q. Do you -- are you aware of
10 whether JLI was negotiating with other
11 tobacco companies in the 2017-2018 time
12 period?

13 A. I don't know. I don't recall
14 seeing evidence of that.

15 Q. Okay. If JLI was negotiating
16 with other tobacco companies in that period,
17 does that mean that they were also
18 influencing the management, direction, and
19 operation of JLI?

20 A. I would have to look at those
21 data and see. I just can't answer that in
22 the hypothetical.

23 Q. Okay. So you haven't looked at
24 at that at all?

25 A. I -- that was not part of my

1 assignment. I was looking at the Altria dual
2 relationship.

3 Q. Okay. Wouldn't that --
4 wouldn't that be relevant? What actions --
5 you know, you say that Altria was influenced
6 all of these actions before the transaction
7 even took place.

8 Wouldn't it also be relevant
9 what discussions JLI was having with other
10 companies that it was potentially negotiating
11 a deal with?

12 A. No, it would not be relevant.
13 And would you like for me to explain why?

14 Q. No, it's okay. I understand
15 your answer, that it would not be relevant.

16 You agree that Altria did want
17 majority control at various -- at most of the
18 points. Correct?

19 A. Well, we do know that they did
20 at some point.

21 Q. Okay.

22 A. But, you know, I can't speak
23 for all points. And I can certainly see how
24 it might be advantageous for a company, like
25 Altria, to have less than majority interest

1 and to have plausible deniability in terms of
2 issues related to JUUL.

3 Q. You saw numerous
4 contemporaneous documents that demonstrated
5 that Altria consistently wanted majority
6 control and were told no by JLI. Correct?

7 A. I don't know that I would
8 characterize it as consistent. I saw some.

9 Q. Did you see a single document
10 that evidenced the hypothetical speculation
11 that you just suggested, that they really
12 just wanted minority control to try to
13 hide --

14 A. Well, they took minority --

15 MR. HUDSON: Object to the
16 form. Argumentative.

17 A. They took the minority
18 investment, so that -- I think that speaks
19 for itself.

20 Q. (By Mr. Stekloff) Right. Only
21 after being told there was no way that they
22 could get a majority investment. Correct?

23 A. I think they become comfortable
24 with the influence they had over Pritzker and
25 Valani and they knew that they could get

1 it -- get what they wanted and had the
2 direction, management, and influence absent
3 minority control -- majority control.

4 Q. Did you review the deposition
5 testimony of Pritzker and others who stated
6 that their primary goal was to remain
7 independent and not allow Altria to control
8 JLI?

9 A. I do remember seeing that
10 testimony.

11 Q. Okay. And are you -- are you
12 saying that that testimony is false?

13 A. I'm saying that, as I analyze
14 the facts in the case, as I analyze what
15 happened, I'm reporting that and relying on
16 that in my opinions.

17 Q. I did not understand your
18 answer. You're reporting what and relying on
19 what?

20 A. Well, why don't you repeat your
21 question again?

22 Q. Yes.

23 Are you saying that the
24 deposition testimony of Pritzker and others
25 who stated -- you told me you read their

1 testimony and they stated that their whole
2 goal was to remain independent and not allow
3 Altria to control JLI. And you agreed that
4 you read that.

5 And then my question was: Are
6 you saying that that testimony was false?

7 A. I'm not. And the reason is
8 because I think control -- I think they can
9 be using control in the same way that
10 Professor Rock was, where they are thinking
11 of legal control. And what I'm looking at is
12 this business question.

13 Q. Right. But they maintained a
14 fiduciary duty and a duty of loyalty to JLI
15 after the transaction. Correct?

16 A. Well, in theory, they do and --

17 Q. Not just in theory. They have
18 that duty. Correct?

19 A. They do.

20 Q. Okay.

21 A. They do have that duty.

22 Q. And you told me earlier that
23 you have no opinion -- beyond the fact that
24 they didn't put more money in -- which you
25 discussed with Mr. Guzman -- that they

1 violated that duty?

2 A. Well, it depends upon how --
3 how broadly one defines the duty of loyalty.
4 And I see that as a broad duty to
5 various -- to JUUL and its various
6 stakeholders.

7 And so I would say that I did
8 not see the kind -- I make the point in my
9 earlier report that, you know, I did not see
10 the type of responsible ethical behavior that
11 I would liked to have seen on their parts.

12 Q. Right. By not putting more
13 money back from the investment. Correct?

14 A. Right. And not doing other
15 things that would have been responsible and
16 that would have taken into account
17 stakeholders, like the youth.

18 Q. Okay. And that's what you
19 discussed with Mr. Guzman. Correct?

20 A. Well, yes. And when I did my
21 earlier deposition, we talked about that.

22 Q. Okay. Now, you are aware that
23 Altria had MarkTen products. You mentioned
24 that before. Right?

25 A. I am aware.

1 Q. (By Mr. Stekloff) My question
2 is simple. I don't want you to repeat what
3 you said before.

4 Do you -- is it your expert
5 opinion that where Altria said it -- one of
6 the goals in entering the vaping space was to
7 convert adult smokers, that that -- that
8 those statements by Altria were false; and,
9 in fact, that they were trying to attract
10 youth vapors?

11 A. It's not my job to make
12 determinations of the falsity or truthfulness
13 of Altria's statements.

14 Q. So, sitting here, do you have
15 any reason to disagree with the statements
16 that you said you have seen in Altria
17 documents that Altria had a goal of obtaining
18 a product in the e-vapor space that was
19 converting adult smokers?

20 A. I do see inconsistencies
21 between what they said and what they did.
22 And I have pointed to those inconsistencies
23 and, you know, I would have liked to have
24 seen a different set of actions, if that's
25 what they really are intending to do.

1 was a strategic reason for Altria to make the
2 investment.

3 So you don't have any cite to
4 say that one of the strategic reasons Altria
5 made the investment was because of JUUL's
6 youth foothold. Right?

7 A. Well, you know, I think I could
8 likely find something, but I thought that was
9 kind of self-evident that -- in fact, Monsees
10 had said earlier something about how -- you
11 know, where are all the Camel smokers going
12 to go?

13 And I think it's very clear
14 that, you know, having a youth market is an
15 important factor to compete for the future.

16 You know, I take your point
17 that I should have footnoted that, and I can
18 and would footnote that it's -- you know,
19 that JUUL has the youth market and that, for
20 most any company, getting young clients that
21 are going to have a lifetime of use is a
22 strategic move.

23 Q. Right. But this is the day I
24 get to question you.

25 So sitting here today -- and

1 please, you have that on October 18,
2 2018 -- I'm -- I'm sort of two lines up from
3 -- at the bottom of the first
4 paragraph -- Altria met with the FDA. Do you
5 see that?

6 A. I do.

7 Q. And you have a Footnote 157.
8 So I wanted to ask you about that footnote.
9 It says in October 2018 Altria was also
10 creating and circulating a list of actions
11 JLI could take to address the youth issue as
12 requested by the FDA, including limiting the
13 sale of flavors other than tobacco, menthol
14 and mint, discontinuing use of social media
15 and establishing restrictions of bulk
16 transactions.

17 Do you see that?

18 A. I do.

19 Q. And then you go on to say when
20 JLI announced its youth action plan to the
21 public on November 13, 2018, these
22 suggestions were all included.

23 Do you see that?

24 A. I do.

25 Q. Do you have any evidence that

1 Altria communicated to JLI what it should
2 include in that youth action plan?

3 A. I assume that -- that this was
4 just a continuation of things they had said
5 earlier in terms of highlighting the
6 importance of these sorts of things and the
7 ability of Altria to address them.

8 Q. But do you -- my question is a
9 little different. Do you have any evidence
10 that -- I mean, I read your footnote to
11 suggest that Altria had -- had a say in the
12 actual youth action plan that was announced
13 to the public on November 13, 2018. And my
14 question is, do you have any evidence that
15 Altria had specific communications
16 about -- with JLI about what it should
17 include in that youth action plan?

18 A. I know they were reengaged in
19 negotiation. I know they were talking about
20 those topics. And -- and so my assumption is
21 that they -- that they did communicate that,
22 whether informally or formally. I don't
23 remember the exact document.

24 Q. Have you seen any documents in
25 which a communication like that occurred?

1 A. Well, I can't -- I've seen so
2 many documents, I can't recall specifically.

3 But they were in negotiations,
4 they were talking. I don't think it's a
5 stretch to assume that they were
6 communicating.

7 Q. Did you look for any documents
8 to see if Altria in fact -- that Altria in
9 fact did not know what JLI would do as part
10 of the youth action plan?

11 A. I -- I don't recall.

12 Q. Okay. If there are such
13 documents, would that suggest to you that
14 Altria was not managing, directing or
15 operating the November youth action plan that
16 was announced by JLI?

17 A. No, because there are so many
18 ways to communicate priorities, and we saw
19 that happening as early as 2017. So inasmuch
20 as there were continuing discussions and
21 negotiations, I don't think it's a stretch to
22 assume that -- that those sorts of priorities
23 were being communicated one way or the other.

24 Q. Okay. Now, put aside the mint
25 issue, which we'll discuss in a moment. The

1 framing mint as a traditional tobacco flavor.

2 Correct?

3 A. I think that was deceptive and
4 I think that if they didn't want to be
5 deceptive like that, they would have pulled
6 JUUL's mint product.

7 Q. Well, in October 2018, Altria
8 did not have control to pull JUUL's mint
9 product. Correct?

10 A. That's right. I was assuming
11 after the investment.

12 Q. Okay. But my question is
13 still -- I still -- we're talking past each
14 other again.

15 You make the -- you offer the
16 opinion that Altria was deceptive with the
17 FDA specific to mint. Right?

18 A. Correct.

19 Q. Okay. And my question is: Is
20 it relevant to whether or not Altria was
21 deceptive with the FDA about mint -- is it
22 relevant whether or not Altria shared data
23 about mint and its role in JUUL's sales with
24 the FDA in the October meeting?

25 A. It depends upon which data they

1 shared. If they share in the very compelling
2 data that -- that JUUL and Altria had, that
3 would be an indication of trying to be
4 transparent.

5 I don't know if that happened.
6 And the fact that they -- and if that is,
7 indeed, the case, if they are sharing that
8 data, they should be saying, we don't want to
9 characterize that as tobacco products.

10 So if they shared that, then
11 they should have also said, you know, we are
12 not going to be characterizing that as a
13 tobacco flavor.

14 Q. You agree with me that what
15 data they shared about mint is relevant to
16 whether or not they were deceptive with the
17 FDA?

18 A. Well, I think it's relevant in
19 part, but the -- the real indication of being
20 straightforward about that would be to say,
21 we are categorizing mint as -- as a flavor
22 and not as a tobacco product.

23 Q. And I -- I understand that
24 opinion but I -- the simple answer to my
25 question is: The level of their deception is

1 Did you look into that?

2 A. I don't recall having evidence
3 of that.

4 Q. Okay. And is it fair to say,
5 therefore, that you have no evidence that any
6 agreement between any two companies was
7 reached at that meeting?

8 A. Well, that's the kind of thing
9 that we wouldn't typically find in documents.
10 You know, that's the kind of thing that --
11 that people would not be eager to share.

12 Q. Did you -- did you read the
13 under oath deposition testimony of people who
14 attended that meeting?

15 A. I read -- I certainly did read
16 many depositions. I don't remember the
17 specific passages related to -- to that. I
18 probably read it, but it's -- and I've read
19 so much in such -- over such a long period of
20 time I don't remember the specific passages.

21 Q. Okay. Do you have any reason
22 to question the veracity of any deposition
23 testimony by any individuals about what
24 actually occurred at that meeting?

25 A. Well, you know, I would need to

1 see that deposition testimony and see -- and
2 know what actually happened. That's the
3 process I go through where I, you know,
4 certainly read depositions, look at exhibits,
5 and then look at what actually happened. And
6 I -- I would need to go through that process.

7 Q. Okay. But you didn't do that
8 here for this specific meeting?

9 A. I -- I don't recall.

10 Q. Okay. In the same section, if
11 you can look at page -- back to Page 36. And
12 we talked about Footnote 157. But I just
13 want to ask more generally about that
14 paragraph.

15 I mean, my read of that para-
16 --

17 A. Now, which -- which paragraph?

18 Q. The first paragraph on Page --

19 A. 36?

20 Q. -- 36.

21 A. Okay. Let me -- let me read it
22 again.

23 Q. Sure.

24 A. (Reviewing.) Okay.

25 Q. And just to sort of paraphrase,

1 A. Well, there was -- there was
2 strategizing.

3 Q. Okay.

4 A. There was joint collaboration
5 and strategizing.

6 Q. Okay. Did you look to see
7 whether there were any contemporaneous
8 documents that were inconsistent with
9 coordinated strategizing?

10 A. I don't recall seeing any.

11 Q. Okay. Would that be relevant
12 to -- to you determining, like you said, not
13 what was said but what actually happened?

14 A. I certainly try to take into
15 account everything that I can, so I would
16 certainly consider --

17 Q. Okay.

18 A. -- something and -- and --

19 Q. Okay.

20 A. -- consider -- consider --
21 reconsider my opinion. But --

22 Q. Okay. So if I showed you
23 something, you would reconsider your opinion?

24 A. It's always -- I think one
25 always has to be open to that -- to that sort

1 of thing. But from what I saw consistently,
2 it looked like both wanted mint on the
3 market, both kept mint on the market. Mint
4 sales exploded and they exploded among young
5 people. They continued to explode among
6 young people.

7 Q. And you, to take it a step
8 further, believed that there was coordination
9 on taking that position, strategic position
10 in front of the FDA?

11 A. It -- it certainly appears that
12 there was communication about that. And
13 there certainly appears, since it was not
14 taken off the market by either of them, that
15 there was agreement on that.

16 Q. Okay. Verbal agreement where
17 they openly discussed this is how we should
18 -- this is the position we should take on
19 mint with the FDA --

20 A. Well, there are all kinds of
21 ways --

22 Q. -- in October of 2018?

23 A. -- to communicate and -- and
24 sometimes the communication does not need to
25 be as overt as what you're talking about.

1 Sometimes it could be as subtle as what I
2 cited where someone says what percentage is
3 mint and somebody else says majority. So --
4 so, you know, there are all kinds of ways to
5 communicate and to -- to signal.

6 Q. What was the level of
7 communication here on the mint issue in
8 October 2018?

9 A. Well, on October 2018 they went
10 to a common meeting, they went to a meeting
11 to -- you know, to try to come up with --
12 with an industry position to limit the -- the
13 damage.

14 Q. What is the common meeting that
15 you're referring to?

16 A. Well, let's see. The meeting
17 we were just talking about, was that --
18 wasn't that in this same time period or was
19 that shortly after?

20 Q. Well, that was in July of 2017,
21 according to Footnote 139.

22 A. Okay.

23 Q. So that's year -- over a year
24 and three months beforehand.

25 A. So, you know, I think that --

1 that given the relationship I saw between
2 Altria, Pritzker, Valani, other board
3 members, given the fact that we had
4 Crosthwaite and Murillo -- Murillo -- not
5 yet, not yet but -- but you're right. You're
6 right. You're right. I --

7 Q. You're confused --

8 A. That was later. That was
9 later. But, you know, I -- I -- I think that
10 we -- I think that -- that it's reasonable,
11 given the relationship that I described
12 between Pritzker and Valani and Altria that
13 there's communication.

14 Q. Okay. So you -- so
15 your -- your -- your opinion, which I assume
16 you offer all of your opinions to a
17 scientific degree of certainty. Right?

18 A. Correct.

19 Q. Okay. So your opinion is to a
20 scientific degree of certainty, there was
21 coordination between JLI and Altria in
22 October 2018 on what to say to the FDA about
23 mint based on what you just described, the
24 relationships between board members and
25 Altria, and -- and -- and that -- and

1 therefore, that -- that allows you to say
2 that there was coord- -- direct coordination
3 on this issue?

4 MR. HUDSON: Object to the
5 form.

6 A. I would not limit this time
7 period to October 2018. You know, I talk
8 about how -- earlier I talk about how in June
9 there is this exchange between Demetri and
10 Valani. So I would just say that the
11 relationship has developed. Altria has
12 influence and -- and the power dynamics are
13 there for the two to share information and
14 share priorities.

15 Q. (By Mr. Stekloff) Okay. Now,
16 if you go to -- we're still on the same
17 section, Page 37, if you look at -- if you
18 look at Footnote 165. We talked before about
19 164. Do you see Footnote 165?

20 A. I do see it.

21 Q. Okay. And that is --

22 MR. STEKLOFF: Actually, maybe,
23 can we actually pull -- pull that
24 document up?

25 Q. (By Mr. Stekloff) I don't

1 public document necessarily. It's just been
2 a long time since I looked at it.

3 Q. Okay. If it was, is that
4 relevant?

5 A. Well, you know, I don't know.
6 I would want to know how widely available it
7 was. And -- and I still think -- even with
8 those documents available, I think it's
9 incumbent upon responsible, ethical companies
10 to take stands like what I would like for
11 Altria to have done and say, hey, we
12 characterize mint as a flavor that youth are
13 attracted to.

14 Q. Right.

15 A. It's a problem. So that's what
16 I would have certainly recommended, that
17 Altria to do.

18 Q. Does that document allow Altria
19 to know that teenagers preferred
20 mint-flavored cigarettes, if it was public
21 and Commissioner Gottlieb read it, he would
22 also have learned from that document that
23 teenagers preferred mint-flavored
24 e-cigarettes. Right?

25 A. I don't know what he had access

1 whether it was public or not, to Commissioner
2 Gottlieb in the meeting?

3 A. I don't recall seeing evidence
4 of that and I don't know that I would have
5 access to that information.

6 Q. Well, what if there was
7 deposition testimony by Altria -- folks who
8 were at the meeting about whether or not they
9 gave the Deutsche Bank study to Commissioner
10 Gottlieb during their meeting?

11 A. Well, I would certainly
12 consider that, but I think the manner in
13 which one gives that information and the
14 advice one gives really matter, too.

15 Altria is an expert in the way
16 FDA commissioner is not on this particular
17 product in this particular market. So I
18 still think it's incumbent upon a responsible
19 company to say, hey, we need to characterize
20 mint as a flavor that's attracting youth,
21 just like Creme Brulee.

22 Q. And did you read any deposition
23 testimony by Altria employees or executives
24 about what they said about mint or that study
25 during the meeting with Commissioner

1 Gottlieb?

2 A. Well, I don't recall off the
3 top of my head. I read -- as I mentioned,
4 I've read a lot over a period of time.

5 Q. Okay. Do you agree that it
6 would be relevant to whether or not Altria
7 deceived -- what was said about the
8 Deutsche Bank study during the meeting would
9 be relevant to whether or not Altria deceived
10 Commissioner Gottlieb and the FDA regarding
11 mint?

12 A. It certainly could be relevant.

13 Q. Okay. And you, sitting here
14 today, can't tell me what you read or didn't
15 read about that issue?

16 A. That's correct.

17 Q. Okay.

18 A. But, again, as I have
19 explained, a responsible, ethical company in
20 the position of Altria, with much more
21 expertise on this product category than the
22 FDA, than Scott Gottlieb, should have
23 characterized mint differently than other
24 traditional tobacco flavors.

25 So I will stand by that

1 would just say why didn't it happen earlier.

2 Q. Did you look at JUUL's market
3 share between 2018 and 2019?

4 A. I'm sure I did at some point.
5 I don't remember exactly what it was then.

6 Q. Okay. But we agree that the
7 Altria nonregulatory services that we talked
8 about earlier ended, I think you said,
9 March 2020, was your understanding?

10 A. Yes, but I would just say what
11 I am analyzing is really much -- much beyond
12 just formal service agreements and formal
13 contracts. I'm looking at the influence of
14 Altria, particularly on Pritzker and Valani,
15 and how that directed and managed JUUL.

16 So I think we may have been
17 talking past each other earlier when we were
18 talking about the ending of the service
19 agreement in 2020. Yes, that did end, but
20 the influence, the ability to manage and
21 direct JLI by Altria did not end then because
22 those relationships continued, the power
23 dynamics continued.

24 Q. Okay. That wasn't my question,
25 but I understand. You very thoroughly laid

1 Q. Do you -- okay. So would that
2 apply to any time any company offers billions
3 of dollars to another company for -- for a
4 share of the company, that is de facto
5 influence from one company to another?

6 A. I would say that those
7 amount of -- that amount of money, those
8 amounts of money certainly are rewards that
9 form a basis for a type of power. And what
10 becomes problematic is what happened after
11 that, the fact that, as I've said repeatedly,
12 that the distribution and sales of a -- of a
13 problematic product that was attracting youth
14 was greatly expanded.

15 Q. Okay. Now, you agree that
16 Altria offered billions of dollars for a
17 majority stake in JLI, right, initially?

18 A. Well, I know they -- I know
19 they wanted a majority stake. I don't know
20 what they offered.

21 Q. You don't know if they offered
22 billions?

23 A. I don't know what they offered
24 for a majority stake. I assume it would be
25 billions since they offered billions for a

1 decision to only provide the company with the
2 \$200 million.

3 A. Well, you know, knowing the
4 power that Altria had, Altria is the
5 800-pound gorilla, I would imagine if Altria
6 wanted more to go to the company, they would
7 have had a way to -- to influence that. So,
8 you know, that's what I -- I imagine.

9 Q. I'm not asking what you
10 imagine. I'm asking you about your opinions
11 to a reasonable degree of scientific
12 certainty.

13 Do you have any opinion that
14 Altria, to a reasonable degree of scientific
15 certainty, decided that only \$200 million
16 could go to the company?

17 A. I don't -- I don't know how
18 that decision came about, but I do know that
19 Altria knew what was happening and must have
20 agreed to it since it was in the contract.

21 Q. Did you look to see if there
22 were any contracts that Altria wanted more
23 money to go into the company?

24 A. I didn't see any. And I looked
25 at a lot of documents. That doesn't mean

1 that it's not there somewhere, but in the
2 many documents I looked at I did not see
3 that.

4 Q. Okay. Now, turning to a new
5 topic, which is the services, do you agree
6 that Altria had no control under the services
7 agreement about which services JLI elected to
8 take and not take?

9 A. You said "control," so that
10 suggests that they could force them to do
11 that.

12 Q. Yes.

13 A. What I would say is that, from
14 what I could tell, Altria had influence,
15 internal influence and --

16 Q. But answer my question about
17 control. I understand your opinion about
18 influence.

19 A. So if your question is did
20 Altria have 51 percent ownership in JUUL and
21 ability to force them to use Altria service
22 -- services, we know they didn't.

23 Q. Okay.

24 A. But as I've made the point --

25 MR. STEKLOFF: Judge Larson,

1 and operation, but if I'm not asking
2 about that, I don't need you to -- to
3 add it on. I just want the answer to
4 my questions, if that's okay.

5 MR. HUDSON: Okay. And all
6 I'll say on the record is that I think
7 today she has been very responsive to
8 the questions that have been asked.
9 If there's one category where you're
10 unhappy about that it's fine to have
11 mentioned that, but I don't think it
12 needs to rise to the point of
13 escalating the situation. We
14 understand and she'll do her very best
15 to answer your questions.

16 Q. (By Mr. Stekloff) Okay. But
17 my question is just simple. Yes or no. Did
18 Altria -- I'm -- I'm conceding the -- the
19 point. Simple question, did Altria have the
20 legal ability to force JLI to take any of its
21 services?

22 A. It did not have the legal
23 ability.

24 Q. Okay. Thank you. Is it also
25 true that JLI chose not to take many of the

1 services that Altria offered?

2 A. Well, I don't know that I have
3 a full understanding of what they didn't take
4 because what shows up in the record is what
5 they -- what they did take.

6 Q. Okay. Well, isn't it relevant
7 in assessing JLI's influence to direct,
8 manage or operate the company what services
9 Altria offered to JLI and wanted JLI to take
10 that JLI did not take?

11 A. No.

12 Q. Okay. Are you aware that
13 Altria wanted JLI to take its youth services
14 that were offered?

15 A. Yes.

16 Q. Do you agree that Altria did
17 not have the influence to not legally force
18 but with it -- the noncoercive ability to
19 have JLI take its youth services and -- and
20 -- and then be part of the direction,
21 operation and management of youth services?

22 A. So -- so my understanding of
23 the new day, new JUUL plan, is that it
24 involved those services and that it was
25 instituted in conjunction with K.C.

1 because it was certainly seated by Altria in
2 making him its board observer.

3 Q. Is it a bad thing to consider
4 hiring someone that you are exposed to
5 through company-to-company interactions who
6 you view as highly qualified and competent?

7 A. Well, I think there is
8 certainly -- it would be hard to say that
9 it's necessarily a bad thing. And what
10 I'm -- I'm not saying it's a bad thing. I'm
11 just saying it's an evidence of influence,
12 direction, management, and operation, or some
13 part in it.

14 Q. Okay. Once Mr. Crosthwaite
15 went to JLI, are you saying that -- well, you
16 agree that he had his own fiduciary duty and
17 duty of loyalty to JLI. Correct?

18 A. Well, certainly that is
19 incumbent upon a CEO and a board member,
20 which he became. So certainly that's the
21 case. But, as you read in my report, I talk
22 about executive socialization and about how
23 he would be predisposed to be open to
24 Altria's influence.

25 Altria helped him prepare to

1 Crosthwaite. And I cite documentation
2 that -- that Altria helped prepare
3 Crosthwaite for that interview and for taking
4 on that position.

5 So I think it's pretty clear
6 that that's what Altria wanted and that
7 Altria was -- was directing. Now, that
8 doesn't mean that JUUL didn't also want it.
9 Because the key to -- to informal influence,
10 the key to soft power is making others want
11 what you want so you don't have to force
12 them.

13 MR. STEKLOFF: Can we maybe go
14 off the record? I'm not -- I'm just
15 trying to get her to answer my
16 question. I know she has, like, a lot
17 of other opinions that are very
18 thoroughly laid out, but we have moved
19 so far past the point of her answering
20 my questions that do you think a break
21 is a good idea?

22 MR. HUDSON: We can take a
23 break.

24 THE WITNESS: Yeah, I'd like to
25 take a break and go to the restroom.

1 Q. And have you studied the
2 details of how distribution and -- and -- and
3 marketing services occurred between -- after
4 the Altria investment?

5 A. Yes, as I think my report
6 explains, I have looked at many documents,
7 have synthesized those documents.

8 Q. Did you look to see
9 whether -- let's focus on marketing -- a lot
10 of the marketing efforts that Altria provided
11 formally in services between early 2019 and
12 early 2020 were -- were actually failures,
13 that they didn't work well, they didn't
14 result in a lot more sales?

15 A. Well, there were so many other
16 things going on in the market at that time.
17 I think it's hard to -- it's -- it's hard to
18 lay blame on their strategies. And, you
19 know, I'm not arguing about whether what they
20 did worked or not. I'm arguing that their
21 -- or I'm opining on the direction, influence
22 and operation.

23 Q. Okay. But so may -- some of
24 the -- even if they influenced the marketing
25 operations, some of it may have not worked

1 services that it provided to JLI beginning in
2 early 2019. Right?

3 A. Certainly. And -- and probably
4 direction, operation and management peaked
5 when the services were at their peak. But
6 they certainly didn't begin with the services
7 contract and they didn't end. The influence
8 and management direction did not end with the
9 service contract because those relationships
10 pre-existed and post existed.

11 Q. Well, you told me earlier you
12 didn't do any assessment of influence after
13 March 2020. Right?

14 A. Well, I think -- I think that
15 perhaps we were talking past each other at
16 that point. And what I was intending to --
17 to say is that, you know, certainly the
18 ability to manage, influence and direct was
19 aided by those services contracts.

20 But because of the
21 relationships, they didn't begin with the
22 services contract and they didn't end with
23 the services contract. They continued
24 because we still had Valani and Pritzker and
25 Altria with these -- with these relationships

1 and all of those sources of power still
2 existing for Altria.

3 In fact, you could argue that
4 some of those sources of power, like the
5 referent power where people developed deeper
6 relationships and like each other better,
7 appreciate each other more, those are likely
8 to deepen with time.

9 Q. And during that entire time
10 period, JLI is still trying to obtain a PMTA
11 and a necessity of that is to address youth
12 vaping issues. Correct?

13 A. Yes. That is part of the PMTA.

14 Q. Okay. Now, are you aware,
15 looking at Footnote 268 that you just pointed
16 to, of when that data is collected?

17 A. Well, I don't recall off the
18 top of my head. I would have to look at
19 those documents again. One has a 2019 date;
20 one has a 2018 date.

21 Q. Right. You're certainly
22 implying that this -- goes through the end of
23 2019. Right?

24 A. What goes through the end of
25 2019?

1 of 2019?

2 A. I did not. At least I didn't
3 cite that. I probably looked at it, but
4 I -- may have looked at it.

5 Q. And if that data -- if that
6 data showed the numbers were actually
7 decreasing, why didn't you include that in
8 your report?

9 A. Well, I think that one thing
10 you could say -- in terms of thinking about
11 why they would be decreasing is because there
12 were so many external factors that were
13 depressing sales at that point.

14 Q. Right. And I'm not asking you
15 about why they may have been decreasing. I'm
16 asking you -- it seems very -- is -- do you
17 think that it is misleading to put numbers in
18 here, suggesting that they run through the
19 end of 2019, when you had access to
20 2000- -- early 2020 data that would have, in
21 fact, shown that the numbers were decreasing
22 by the end of 2019?

23 A. Well, I think that you've made
24 a good point, that I -- that I should have
25 gone on and presented the new data and

1 explained why they were probably less, but
2 this is a very egregious thing that we
3 see -- we see these numbers increasing.

4 And -- and, as I've mentioned,
5 I argue that the relationship and the
6 influence and the direction didn't start with
7 the service agreements, that those are, you
8 know, legal agreements and that the -- the
9 power dynamics began considerably earlier.

10 Q. Right. But you told me before,
11 under oath, that if I needed an absolute date
12 of when the influence was having a real
13 impact on the direction, management, and
14 operation of the JLI, it was the date that
15 the deal occurred. Correct?

16 MR. HUDSON: Object to the
17 form. I think that mischaracterizes
18 her testimony.

19 A. Yeah, I do think that
20 mischaracterizes. If you looked at the -- if
21 I were only to have the preinvestment data,
22 if the investment didn't happen, it might be
23 a harder case to make.

24 But given -- but I think I did
25 demonstrate that influence was happening

1 before the investment, when you take the pre
2 and the post investment.

3 Q. Okay.

4 A. Then we have, I think, a case
5 that's not a close call.

6 Q. Okay. And just looking at the
7 preinvestment, it's irrelevant to your
8 opinions about the preinvestment, what --
9 whether -- what Altria was doing
10 competitively with JLI, correct, with the
11 Elite pod products?

12 That's irrelevant. Right?

13 A. Well, what I would say is that
14 I didn't feel like I needed to analyze
15 what -- what Altria was doing or what other
16 competitors were doing with their products in
17 order to understand the dynamics between
18 Altria and JLI.

19 Q. Right.

20 A. So I wouldn't say that it's
21 irrelevant, but I would say that I didn't --
22 I don't know that I would go so far as to say
23 it's totally irrelevant, but I didn't feel
24 like it was necessary to understand the
25 dynamics between these two parties.

1 continued to read documents since last
2 September and that I have read more documents
3 since then, yes.

4 Q. Okay. But how much work -- how
5 many hours have you spent working on this
6 case since last September?

7 A. You know, I would have to go
8 back and look at my bills. I don't know. I
9 know that I have -- you know, I billed after
10 September, before the end of the year, and I
11 billed again after the -- the new year
12 started, so I -- I would just have to go back
13 and look at my records. I don't know. But I
14 have been working a lot on this.

15 Q. Okay. That's fine.

16 A. I mean, I -- it's --

17 Q. In your second -- I'm sorry.

18 Your second report in May of
19 this year, as I read it, only discusses the
20 work of Professor Rock. Am I right about
21 that?

22 A. I would disagree with that. I
23 certainly respond to Professor Rock, but I do
24 a lot of analyses that he did not do that's
25 not in response to him. I tried to look at

1 the logic behind the investment and at the
2 interactions between JLI and Altria. So I
3 would say that it's more than a response.

4 Q. I'm sorry to interrupt you.
5 It's a little slow on the transmission. So
6 if I talk over you I can assure you that it's
7 inadvertent.

8 A. Same here.

9 Q. So -- but if your
10 assignment -- I'm looking at your
11 assignment -- that you were asked -- this is
12 from your report in May of this year.

13 You say, "I was asked to review
14 professor Edward D. Rock's expert report
15 regarding Altria" -- and there is his name --
16 "that his relationship to JUUL Labs and to
17 evaluate the evidence from a practical
18 business perspective to determine whether
19 Altria had some part in directing the affairs
20 of JLI during the relevant period and, if so,
21 to explain the ways that Altria directed
22 JLI's affairs."

23 Did I get that right?

24 A. I believe so.

25 Q. Okay. So it'd be fair to say

1 any changes and the reasons therefor;
2 _____ was not requested by the deponent or a
3 party before the completion of the
4 deposition.

5 I further certify that I am neither
6 counsel for, related to, nor employed by any
7 of the parties or attorneys in the action in
8 which this proceeding was taken, and further
9 that I am not financially or otherwise
10 interested in the outcome of the action.

11 Certified to by me this 2nd day of
12 June, 2022.

13
14
15 

16 _____
17 Pat English-Arredondo,
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